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[Aller au sommaire du numéro](#)

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Résumé de l'article

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## Discursive Entrapment and the Limits of Potentiality in *Plyler v. Doe*

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*This essay traces the enduring legacy of the figure of the child leading up to and at the centre of the 1982 Plyler v. Doe decision. I attempt to demonstrate the limits of the discursive deployment of the child figure for racialized subjects. This essay intervenes in education, childhood studies, and immigration literature by reading the child to understand the enduring legacy of Plyler for those who are not the central focus of the court case. I demonstrate how the necessity of matriculating into U.S. schools is implicated in politics of disposability for racialized gendered populations represented in reading the contradictions in immigration reform.*

**Key words:** race, migration, science, law, plasticity

In 2012, President Obama announced Deferred Action for Childhood Arrivals (DACA) through an executive order that made young undocumented migrants a lower priority for deportation than other migrants and provided work permits. It was designed for migrants who met a set of five criteria, which included school enrollment, graduation from high school, a general education development (GED) certificate, or being an honorably discharged veteran of the Coast Guard or Armed Forces of the United States (Napolitano, 2012). While DACA moved certain undocumented migrants to a legally liminal space (Menjívar, 2006), it also left millions of undocumented migrants without similar access to public benefits (e.g., public housing, cash, and food assistance) and prioritized them for deportation and incarceration. Throughout

this essay I emphasize that the disposability of the millions of undocumented migrants in the United States is required by the U.S. legal apparatus to affirm the provisional rights of others. Even so, with the collection of identifying information and a two-year renewal process, the fear of deportation for those enrolled in the DACA program—after years of making their presence in the United States unknown—has increased in the post-Obama Administration era. It is important to note that the Obama Administration made sure to announce the DACA program on the 30<sup>th</sup> anniversary of the monumental 1982 *Plyler v. Doe* decision, which made it unconstitutional to deny a free public education to anyone regardless of immigration status—a decision I take up throughout this essay.

Conversely, on November 20, 2014, to ameliorate the situation for adult migrants, President Obama announced on national television a similar program called Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) wherein adult migrants who met a set of requirements would also be made a lower priority for deportation (Kelly, 2017). The program faced opposition from 26 states led by Texas, and a nationwide injunction on the program was made in February 2015. The decision was appealed and heard in the Supreme Court on April 18, 2016, with the announcement that the justices were equally divided on the issue, effectively affirming the lower court's injunction (*Texas v. US*, 2015). On June 15, 2017, the Department of Homeland Security (DHS) released a memo officially rescinding DAPA in its entirety (Kelly, 2017). The requirement of being a parent of a U.S. citizen or legal permanent resident is contingent on heteronormative family constructs that excluded millions. Still, this

requirement of being an adult and a parent/guardian to a U.S. citizen or legal permanent resident was not enough for DAPA to pass. That is, even the proximity to a U.S. citizen or legal permanent resident was not enough to secure a future that would be different than the past and the present.

How did two seemingly similar programs designed to have similar effects for millions of undocumented racialized migrants have such different trajectories? I want to suggest that returning to the 1970s and 1980s, not unlike the recursive move by the Obama Administration's turn to the anniversary of *Plyler v. Doe*, opens the possibility for answers. In the previous decade, the Hart-Celler Immigration Act of 1965 was an attempt to undo the restrictive Johnson-Reed National Origins Act of 1924, but it still imposed strict numerical quotas in the Western Hemisphere that would produce an increase in the number of people legally defined as undocumented migrants who might not have been otherwise (Menjívar, 2006; Ngai, 2014). In the late 1980s the Reagan Administration passed the Immigration Reform and Control Act of 1986 (IRCA) which provided amnesty to an estimated 2.7 million undocumented migrants and sought, albeit unsuccessfully, to curb the employment of the undocumented migrants (Ngai, 2014, p. 266). While all three acts mentioned so far have been important in immigration history, I want to take seriously the Obama Administration's turn to the anniversary of *Plyler v. Doe* by focusing on the events leading up to the case and interrogating what is at stake in engaging in a sustained analysis of the discourse within it. The questions that guide the reading and analysis in this essay are: How did we get to a place within migrant activism that relies on logics of disposability predicated on relation to U.S. schools? How do these logics persist within immigration reform and advocacy? How might tracing the child figure in U.S. jurisprudence and education lead us to answers to these questions? Taken together, then, these questions take seriously the child at the centre of these cases within longer histories of immigration reform for undocumented racialized people in the United States and the relationship between immigration and education in rights-based struggles.

I want to suggest that a revisiting—beyond celebrations of its successes and perhaps precisely because of them—of *Plyler v. Doe* (1982) is necessary to understand how we arrived at such differing trajectories for DACA and DAPA. To accomplish this work, and to provide answers, I trace both the discursive deployment of the child figure / childhood and the ephemeral—and undertheorized—presence of the undocumented racialized adults leading up to and produced in *Plyler v. Doe* (hereafter *Plyler*). I read the emergence of Texas Education code §23.031 in 1975 because it changed who could enroll in public schools through its resolution in 1982 in the Supreme Court throughout this paper and consider what the child figure accomplishes at the centre of this case. In doing so, I trace the ways in which the criminalization of the undocumented racialized adult migrant in *Plyler* secured the right to an education for undocumented children vis-à-vis a discursive deployment of the child and childhood that forecasts the entrenchment of criminalization for the same children as they later transition into adulthood. Although undocumented racialized adult migrants and adulthood are not the subject of the monumental decision and their appearance within the legal record is cursory, it is this further criminalization that I want to draw attention to in this essay. To do so, however, requires a sustained engagement with the child figure at the centre of this case. At stake in this essay are the ways in which the child figure shows up in the legal record for racialized and undocumented populations and entrenches an embodied existence that is simply incommensurable with lived realities and how immigration reform, whether progressive or liberal, affirms the social order. Additionally, and perhaps most controversially, this essay attempts to demonstrate how the necessity of matriculating into U.S. schools and obtaining a degree is implicated in politics of disposability for racialized gendered populations that are starkly represented within contradictions in immigration reform regardless of conservative and liberal orientations.

The layout of this essay is as follows: I first give an account of the conditions of emergence leading up to *Plyler* in 1982. I then demonstrate what can be gained from queer of colour and historical materialist approaches to *Plyler*

as a way of locating it within the corpus of U.S. jurisprudence on immigration reform and Chicana/Mexican American rights. I then turn to a sustained engagement with the child at the centre of *Plyler*. I end with a brief meditation on sitting with uneasy histories and reconsidering the appearance of affect as necessary to generate political and ethical orientations that avoid the reification of criminality, deservingness, and disposability in immigration and education couplings. To be sure, this essay is less prescriptive and more interested in approaching favourable political and legal wins with some apprehension, even in the face of optimism in migration and education politics. This essay intervenes in education, childhood studies, and immigration literature by reading the child as defined in the interdisciplinary field of childhood studies and drawing on queer of colour and historical materialist approaches to understand the enduring legacy of *Plyler* for those who are not the central focus of the court case without subscribing to a liberal reformist political orientation. I use the terms *the child* and *the child figure* to denote the abstraction of childhood as a means of illustrating the meaning that the child is imbued with (Castañeda, 2004; Gill-Peterson, 2018; Steedman, 1995). Indeed, the figurative capacities of the child are informed by and inform how children are perceived and treated. This essay is one example of the tension between the abstraction of childhood and children's lives and the effects of such a tension in the present (Gill-Peterson, 2018). Although the bifurcating of undocumented racialized migrants through childhood and education serves certain political purposes, my hope is that this essay demonstrates how that dichotomy collapses on itself because of race. One last note: Although this essay is about U.S. immigration law and policy, the way I go about my analysis and the legal trajectory I outline might prove useful to scholars outside of the U.S. context. Indeed, my hope is that this essay proves useful for scholars who are working at the intersection of law, education, childhood, and immigration.

### **The facts of the case from 1975 to 1982: Securing public benefits, property, and whiteness in Texas via schools**

Legal and education scholars have written extensively about the significance of *Plyler* post-1982 (Abrego, 2006; Abrego & Gonzales, 2010; Gonzales, 2010, 2011, 2015; Gonzales & Chavez, 2012; Gonzales et al., 2015). The struggle for an education for racialized gendered populations is also well documented with an abundance of scholarship on *Brown v. The Board of Education* and *Mendez v. Westminster*. *Plyler v. Doe* was distinct insofar as the right to an education and whether the equal protection clause included undocumented Mexican children in Texas. The argument made by the Texas State Legislature in 1975 was that undocumented children fell outside of the public within Texas's jurisdiction and thus did not qualify for access to the free public education offered to children who were U.S. citizens or legal permanent residents. In this section I provide historical background for *Plyler*, its significance for undocumented students, and the framing of rights to a public education. This section highlights some of the more common readings of the conditions surrounding *Plyler's* arrival and decision in the Supreme Court. I begin with the emergence of *Plyler* and end with the affirming Supreme Court decision that secured access to education for undocumented Mexican children and students of all legal statuses.

In 1975, without a public hearing and with no votes, the Texas State Legislature passed a revision to the Texas Education code §23.031 implementing provisions that defined who was and was not eligible to a free public education in the state of Texas (Hull, 1982; Ofer, 2011; *Plyler v. Doe*, 1982; Soleimani, 2010). The three provisions that were most pertinent for the case were those that clearly defined who had rights to a free public education, namely “children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year” (Hull, 1982; Olivas, 2012; *Plyler v. Doe*, 1982). With this definition of who was entitled to a free public education in Texas, the Legislature gave school districts the latitude to implement the code as they saw fit, which was a choice between charging students annual tuition of \$1,000 or barring them altogether (Hull, 1982; Ofer, 2011; Olivas, 2012). This latitude given to school districts by the Legislature was consistent with the structure of the Texas Education Agency because it operated

under the local control structure wherein districts, if they were compliant with minimal acceptable standards at the state level, implemented policies based on their interpretations and needs (Shelley, 1994). The state statute also dictated that some state funds would be withheld from school districts if they enrolled students who could not prove their lawful presence in the United States. Some school districts since 1975 had begun denying enrollment to children in their schools if they could not provide documents demonstrating they were “lawfully present in the United States” (Hull, 1982, p. 413), while others charged tuition. The provisions in the education policy defining who had access to a free public education in Texas did not come with any argument, empirical or otherwise, for its amendment (Ofer, 2011; Olivas, 2012). As undocumented school-aged Mexican children were increasingly barred from enrolling in schools, their families, civil rights activists, and attorneys began challenging the legality of the code. The first case, in 1977, was *Hernandez v. Houston Independent School District* (HISD), in which the lower courts upheld the constitutionality of the code (Gerety, 1982; *Hernandez v. HISD*, 1977). The representatives for the plaintiffs in this case argued that the code was a denial of due process in addition to violating the Fourteenth Amendment, a divergence in argumentation from the other cases that would pave the way to the Supreme Court.

In September of 1977, two years after the state of Texas enacted the policy, undocumented Mexican children were named as plaintiffs seeking an injunction and relief in Smith County, Texas, and exclusion from public schools in Tyler Independent School District (TISD; *Doe v. Plyler*, 1978). Although the Legislature had implemented the code in 1975, the board of trustees of TISD feared that Tyler, Texas, would become a “haven for illegal aliens” and thus implemented the restrictive code two years after its initial enactment (*Doe v. Plyler*, 1978). These claims of protecting school as a service for the public and of education as driving undocumented migration to Texas are part of longer histories that try to protect the investments of tax paying U.S. (read: white) citizen-subjects (Ngai, 2014; Saldaña-Portillo, 2016). The tension about school funding is also reflected in the code insofar as the state of Texas was threatening to withhold funds from schools that did not act on barring students or charging tuition even though per-pupil funding was provided by the federal government (*Doe v. Plyler*, 1978).

While the central claim of the children in this case and their representatives was that the code denied them equal protection under the law, the defendants—the superintendent of TISD James Plyler and the Board of Trustees—claimed that the inclusion of undocumented Mexican children would be detrimental to the education of citizen children and the legally admitted child (*Doe v. Plyler*, 1978). In January 1978 the governor of Texas and the commissioner of education of the state of Texas were added to the action. Facing the seemingly insurmountable odds and an uphill battle, the plaintiffs and their representatives at the Mexican American Legal and Education Defense Fund (MALDEF) would not be deterred (*Plyler v. Doe*, 1982). At the time the case was heard, there were an estimated 30–40 undocumented school-aged children in TISD, not including the plaintiffs of this case. TISD became the first district to be challenged in the courts wherein the Eastern District of Texas found the application of the policy to be unconstitutional (Cardenas & Cortez, 1986; Hull, 1982). Judge William Wayne Justice systematically refuted the defendants’ claims that undocumented Mexican children would drain the already limited resources in schools.

The judge issued an injunction in the TISD but refused to enforce a statewide injunction. Michael Olivas reminds us that the selection of TISD as the representative case was strategic for having a “progressive judge, sympathetic clients, [and] a rural area where the media glare would not be as great” (2005, p. 205). The legal strategy was such that a small district would lose the schools money because a greater portion of school funding was allocated at the federal level. Judge Justice faced backlash from constituents in Texas who disagreed with his fundamental definition of illegal aliens.

Olivas (2005, 2012) recounts that Peter Roos (the lead attorney on the case) refused to consolidate his case with

others, like the Houston case, because of what he felt were the strengths of TISD. Roos, having witnessed the previous decision in Houston, did not feel confident about the odds of winning the case in favour of the children. However, three other cases would be consolidated and heard in the Southern District Court of Texas in Houston in 1980. While Roos ensured that his case was not consolidated, the discourse itself was the same, and interestingly, district judge Seals invoked “the Year of the Child,” which had been declared on an international level in 1979 by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), stating that children were “the basic resource of our society” (“*In re Alien Children Ed. Litigation*,” 1980). Olivas notes, and the legal record corroborates, that *In re Alien Children* handed down a successful decision for the plaintiffs in July 1980, and the Fifth Circuit Court of Appeals affirmed Judge Justice’s *Plyler* decision. With these decisions handed down, the courts were affirming that the Equal Protection Clause did apply to undocumented Mexican children and did so by invoking the children’s innocence and futurity. The cases would eventually be consolidated on their way to the Supreme Court, with the *Plyler* case taking centre stage.

In 1981, *Plyler v. Doe* was heard in the Supreme Court after TISD superintendent Plyler and his representatives appealed the injunction in the U.S. Court of Appeals. The central question under review by the Supreme Court was whether “consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas may deny to undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens” (*Plyler v. Doe*, 1982). The Court affirmed three of the decisions made by the Eastern District of Texas when it first handed the injunction in TISD. The affirmations were as follows: (1) the concern for fiscal integrity was not compelling for state interests because undocumented Mexican children did not compromise the resources and because the schools used a formula that included state and federal funding; (2) the claim that the exclusion of these students would improve education for their peers was unfounded; and (3) the students to be excluded were not fundamentally different, except for lack of a social security number, than those not excluded from schools or districts (*Plyler v. Doe*, 1982).

Ultimately, the Supreme Court decision that undocumented school-aged children could not be denied access to public education was monumental for protecting children, and their families, from having to disclose their undocumented status to school officials as well as providing children with access to an education. Whereas some scholars focus on whether intermediate scrutiny was the correct level of scrutiny applied in *Plyler*, others consider whether undocumented children are a quasi-suspect class and whether the decision was consistent with other education cases. Less scholarship focuses on the impact of *Plyler* for those who did not fall within the parameters set forth in the concurring majority opinion or the effect of the discourse on the subject, whose rights to an education were being affirmed, as they aged. The affirmative discourse was not itself a resolution, but it created a stasis that apprehends a particular temporality for those who do matriculate into U.S. schools. In the following section I read what contributions historical materialism provides in considering the simultaneous effects of the discourse on undocumented racialized children and undocumented adults when criminality is deferred to the undocumented racialized adult migrants who, as positioned in the majority opinion, knowingly exist(ed) in and brought children into the United States.

### History and time in *Plyler v. Doe*

For the purposes of this essay and the stakes I have outlined thus far, different approaches to the past allow for a consideration of the enduring influence of the discourse and imaginaries produced within *Plyler* that seep into the present. More precisely, they allow for an apprehension of the fleeting but nevertheless important appearance of the adult, and the temporalization of criminality using the child figure. I emphasize that the questions within *Plyler* and imaginaries around different relations to education for undocumented children and adults benefit from queer

of colour and historical materialist approaches. Additionally, the conceptual work of *haunting* (Derrida, 2012) works on two different but intertwined levels: (1) how the adult is still used within the present to affirm the rights of the child; and (2) how the deployment of the child figure bifurcates undocumented Mexican children in their own temporality that haunts them.

Political theorist Wendy Brown's *Politics Out of History* (2001) provides us with a rich set of thought-provoking questions by way of her reading of Jacques Derrida's *Specters of Marx* (2012) and Walter Benjamin's angel of history. In her reading Brown asks what drives radical political scholars to deploy what she calls "quasi-theological figures" and what this turn tells us about what has been exhausted in secular thought (p. 143). Brown states that, for Derrida, "hauntology," or that which analyzes the presence of the spectre (and its ability to be conjured, its furtive and sometimes fleeting appearance), refuses traditional historiography even though it "harbors both an eschatology and a teleology" (p. 149) because of its inability to be fully understood or mapped out. It is the ephemerality of the spectre as metaphor that allows it to provide alternatives to modern teleological narratives of progress that presume a fixed present (pp. 146–148). As Brown states, "the specter begins by coming back, by repeating itself, by recurring in the present. It is not traceable to an origin nor to founding event, it does not have an objective or 'comprehensive' history, yet it operates as a *force*" (p. 150, emphasis in original). For Derrida, the spectre's condition is that its presence *is* fleeting; it is this dimension, this absence/nonabsence that provides the haunting. I find it equally important to apply the affective dimensions of the present to *Plyler* as a way of orienting the kinds of questions asked and the answers that result. While *Plyler* was certainly a legal win, the positive feelings that liberal reformist immigration strategies rely on are placed onto legal and political structures in the U.S. nation-state whose primary functions are to affirm a social order.

Chandan Reddy's (2011) analysis of memorialization is instructive here as he stipulates that "history has both a redemptive and explanatory force in relation to the legal norms that were once exclusionary" (p. 203). By this he implies that history serves to suggest we must never forget how far we have come over the course of time from a once exclusionary past while simultaneously explaining the specific conditions that produced the exclusion to begin with. We see this dictum demonstrated not only in Obama's announcing of DACA on the 30<sup>th</sup> anniversary of *Plyler* but also in those who embrace the liberal reformist discourse that requires the abjection of the undocumented adult migrants who do not have a similar relation to education or potential. Reddy points out the cruel irony "that the social history of the excluded community is now dependent for its conditions on representational existence on the popular affirmation of the norm from which it was excluded" (p. 203). Again, the difference here is that the children represented in DACA are direct beneficiaries of *Plyler* who aged into a problem that was never resolved and was affirmed in legal discourse: the intractability of the law and the criminality of the undocumented adult racialized migrant. Thus, while added into the discourse is the relationship to education as adults, it still depends on the affirmation that the criminal, undocumented adult racialized migrant is needed for such a discourse to be viable.

Approaching the discourses of childhood—both as abstraction and as actual lives of children in the court cases—and of deservingness tied to education in *Plyler* as spectral within the discursive context is illuminating insofar as it allows for an understanding of how the questions asked and the answers in the present have shifted and imaginaries produced within the legal record haunt the present. It opens and insists on a *re-narration* of historical events that ask us to reconsider the positive affective dimensions in the discourse in *Plyler*. I suggest that the way to do this is to search for the fleeting but nevertheless important appearance of adulthood and adult migrants in the record as it serves to affirm the protection of the child and childhood. This construction of the child and adult racialized migrants as diametrically opposed subjectivities within the legal record regarding education continues to shape the present.

## Separating the undocumented racialized migrant child from adulthood

Childhood occupies a particularly vulnerable position in the United States and globally. Discursively, the potential of a child and the investment in a presumed future that the adult-to-be will have continually circulates to appeal to the moral imperative to invest resources so that the child can develop “normally.” It is the mobilization of this imaginary—one of children, albeit sometimes disconnected from their material realities, as defenseless and full of promise—that fills law and public policy discourse. Indeed, the child is the future, just as the child represents the past of the adults who shape policies for the present-day child, but how do laws and policies aimed at the potential of the child—in this case the undocumented racialized school-aged child—believe the conditions that the child under discussion will age into? How do valorization and criminality become temporalized in legal discourse such that an assumed, yet-to-be-known future is already determined? In this section, I bring together scholarly works that consider the figure of the child to provide a close reading of the discourse used in *Plyler* to read the child figure as abstracted from the material realities that the children themselves would age into. More pointedly, this child figure resulted in a temporalization of criminality, ensuring that the undocumented racialized school-aged children aged into a criminality that, in the concurring opinion, was reserved for the undocumented racialized adult migrants who “committed the crime.”

Let me take up one of the opinions of Chief Justice Brennan in *Plyler*:

They [the children] are excluded only because of a status resulting from the violation by parents or guardians of our immigration laws and the fact that they remain in our country unlawfully. The appellate children are innocent in this respect. They can affect neither their parents' conduct nor their own status. (*Plyler v. Doe*, 1982, emphasis added)

While the undocumented migrant child for whom this decision is monumental is “forgiven” due to their innocence as a child, the undocumented adult migrant who cannot participate in the U.S. public school system is criminalized in the process. This case is littered with the enactment of this social and political imaginary: “Even if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice” (*Plyler v. Doe*, 1982, emphasis added). While this is a short-term argument that was beneficial for children enrolled in schools, the consequences of criminalizing undocumented adult migrants influences immigration politics in today's political climate. What happens to the undocumented migrant child as they move into an adulthood wherein their legal status has not changed, and how is this bridge gapped?

Lee Edelman (2004) argues that the accepted ethical and moral concerns placed onto the “figure of the child whose innocence cries out for defense” is dangerously political because it creates “the universalized fantasy subtending the image of the child [that] coercively shapes structures within which the ‘political’ itself must be thought” (p. 19). Edelman reads Jacques Lacan's outlining of the signifying relations in the symbolic to argue that

politics designated the ground on which imaginary relations, relations that hark back to annotation of the self-misrecognized as enjoying an originary fullness—an undifferentiated presence that is posited retroactively and therefore lost, one might say, from the start—compete for symbolic fulfillment within the dispensation of the signified. (p. 20)

Edelman details the ways in which the figure of the innocent and defenseless child is deployed in U.S. political discourse such that it becomes almost impossible to disagree in instances that the child must be defended. If legal discourse is itself a representation of and seeks to affirm the politics that Edelman describes, then that which provides the bridge between the undocumented racialized children in *Plyler* and the figure of the child that



Edelman identifies is both the deferral of criminality to adulthood and the participation in U.S. education. Read this way, instead of placing the onus on undocumented racialized children and undocumented racialized migrants more broadly, legal discourse, itself an affirmation of the social, serves as the site where these limits are set and reaffirmed.

Carolyn Steedman (1995, as cited in Castañeda, 2002) details that literature in the 18<sup>th</sup> century dedicated many pages to constructing and circulating images of the child that later become important as modern science and medicine began to focus on a staged progression of the human in the 19<sup>th</sup> and 20<sup>th</sup> centuries, which was taken up by and circulated within the modern legal apparatus in the U.S. nation state. In *Figurations: Child, Bodies, Worlds*, Claudia Castañeda (2002) cogently puts forth her analysis of the use of the child as figuration in a myriad of local-global contexts. In explaining her use of figuration as a tool to describe “the child’s appearances in discourses as well as across them,” she states that for her, “figuration entails simultaneously semiotic *and* material practices” (p. 3, emphasis in original). She argues that these figurations of the child condense in them the myriad semiotic and material practices such that their appearance across various local-global contexts “brings a particular version of the world into being” (p. 3). Castañeda locates her primary analysis on the construction and circulation of normative human development wherein the human child is marked by its potentiality insofar as it will eventually reach adulthood. Thus, the child is distinct because “it has the capacity for transformation. In fact, such transformation is a requirement.... This implies that the child is also never complete in itself” (pp. 2–3). Therefore, the child has and is the raw material upon which a multiplicity of sciences—especially those that intend to establish the progression of the human—use to increase and cement previously elusive understandings of such development.

Similarly, the concept of plasticity—the alterability of child/body/mind before it reaches puberty—became central in the 19<sup>th</sup> and early 20<sup>th</sup> centuries to institutionalize, medicalize, and normalize the physiological and psychological changes that undergird the construction of modern social scientific assumptions of the natural progression of the human (Castañeda, 2002; Gill-Peterson, 2018; Steedman, 1995). Gender and childhood studies scholar Jules Gill-Peterson (2018) attends to the ways in which branches of medicine (e.g., endocrinology, embryology) made use of the child body and the child as metaphor as a means to further the knowledge of the human while perpetuating and entrenching racialized and gendered hierarchies at the phenotypic and ontogenetic levels. Gill-Peterson details the *creation* of the developmental model that maintains racialized and gendered hierarchies vis-à-vis the medical model and social policies that create and maintain the state and federal institutions that I bring to bear in this essay. Both Castañeda and Gill-Peterson signal to the ways in which the now typical developmental model is constituted across a myriad of scientific arenas that consequently provide social institutions with the assumed always already in existence developmental progression that is codified into law and policy. For example, Castañeda (2002) states, “the child’s inner capacities have been constituted as the ‘natural’ domain of psychological research, and they also provide a ‘natural’ ground on which social institutions, such as education, work to ensure—and enforce—normative development” (p. 43).

Castañeda and Gill-Peterson make allusive references to the role of education in instituting the normative developmental model such that to critique its existence could be misread as critiquing the social and cognitive benefits of education more broadly. It is through continual circulation of the child as metaphor that the effects on the living children who provide the fodder for such metaphors to be workable can be missed. That is, while the figurative child exists, what is distinct is that for it to serve as an apt metaphor, actual living children are necessary (Castañeda, 2002; Gill-Peterson, 2018; Steedman, 1995). Considering that the child necessitates the existence of “actual living children for its abstraction” (Castañeda, 2002, p. 43), what dislocations of actual children take place precisely through this abstraction? On the one hand, it is the ability to suspend the longer-term predicament the actual children at the centre of this case found themselves in that seems irresolvable: undocumented migration.

On the other hand, what seems irresolvable is the dislocation of the child from its own temporality as a soon-to-be adult. I take up these points below.

Legal scholars might find it expedient to critique my position insofar as the task of resolving undocumented migration cannot be affected by the U.S. Supreme Court and requires congressional intervention. I would be foolhardy to disagree with this obvious fact. Justice Powell himself affirmed as much in his concurring remarks in *Plyler*:

Perhaps because of the intractability of the problem, Congress, vested by the Constitution with the responsibility of protecting our borders and legislating with respect to aliens—has *not provided effective leadership in dealing with this problem. It therefore is certain that illegal aliens will continue to enter the United States and, as the record makes clear, an unknown percentage of them will remain here.* I agree with the Court that their children should not be left on the streets uneducated. (*Plyler v. Doe*, 1982, emphasis added)

Here, Justice Powell highlights the complexity of undocumented migration, but he also notes that “an unknown percentage of them will remain here” as he affirms that “children should not be left on the streets uneducated.” The “illegal aliens” and the “their” Justice Powell is referring to are the undocumented Mexican adults who are the parents of the children he is concerned will be left on the streets uneducated. The discursive separation happens between the innocent child, frozen and emptied of the conditions that grip the undocumented child’s life, and undocumented adult migrants.

The quotations also demonstrate that law constructs illegality to be an irresolvable problem, reserved for the adults in this case, that requires a change in status or leaving the United States (by choice or by force; De Genova, 2002). The locus of such an argument is the centering on individual actions that make illegality a matter of decision rather than a historical and social problem that invariably produces “impossible subjects” (Ngai, 2014) and places the onus on the individual, in this case temporalizing it to adulthood, to resolve a problem that they produced by way of their actions. How is such a move justified?

One reason might be that the depiction of child innocence, as previously mentioned, and the adult are bestowed with enough logic within which to be apprehended by their criminal actions by the full force of the law, despite the intractable problem of the enduring undocumented status of both. I do not mean to suggest that the children at the centre of this case should have been treated within the law as adults; such a suggestion is clearly against most ethical orientations. However, I do want to highlight, as I have reiterated throughout, the tension in the difference between childhood and adulthood within the legal record as diametrically opposed positions within the law even though the adults themselves represent former children and the children themselves represent the soon-to-be adult.

I find the alterability of the child mind that has been cemented by psychology and neuroscience helpful to consider. As Castañeda (2002) reminds us,

it is precisely this incompleteness and its accompanying instability that makes the child so apparently available: it is not yet fully formed, and so open to re-formation. The child is not only in the making but is also malleable—and so can be made. (2002, pp. 2–3)

The child is malleable and impressionable, thus an investment in this malleability is not out of the question. The investment, if not always material but figurative, in what the child could be, its potential to the body politic, and the role of education in achieving a particular goal for the state are founded on gaps between living children and the metaphorical child that ensure the viability of discursive entrapment of potentiality. Therefore, even whilst actual

living children are the demographic that certain social institutions are ostensibly designed to serve, it is precisely the attachment of temporal potentiality to the child figure that betrays actual living children as they age into adulthood. Simply put, the “withering of the plasticity” (Gill-Peterson, 2018) and the dissipation of potentiality as the child ages are co-constitutive of the conditions that actual living children age into. We need not look further than the uneven life chances and maldistribution of resources that Black, Latinx, and Indigenous children inherit because of being born as racialized gendered subjects. This elision is made possible precisely because the metaphor of the child is often disconnected from both the actual lives of children and the logic of investment in children’s future that undergirds struggles for educational equity.

While Edelman himself admits this to be the case, he is simultaneously critiqued for creating a universal fantasy of the symbolic, or politics against which the white queer subject will serve as the vanguard of a revolution, or an apolitical oppositional politics that is no less political than other orientations (Edelman, 2004; Reddy, 2011). Edelman’s conceptualization of the figure of the child has been charged as ahistorical, as has his approach to history (Dinshaw et al., 2007). Furthermore, Reddy (2011) suggests that Edelman’s concept of reproductive futurism, in which the child figure’s innocence and futurity serve to preserve the United States nation-state as a heteronormative construction, takes for granted that this futurity effaces histories for racialized gendered subjects whose subjugation is both the condition of possibility for futurity and serves as the exclusion from potentiality for racialized and gendered subjects in the United States. Moreover, Reddy reminds us that futurity, as conceptualized by Edelman, “can name a premonition of a new and irregular reproduction of the racialized subject, a subject for which abjection and disidentification as constitutive to each and every iteration of that subject is normatively, if at times painfully, avowed” (p. 177). If such abjection is indicative of the conditions under which the racialized gendered and undocumented subject is produced, each iteration found in the present contains the residue of previous constructions that can, and should be, traced and understood with the intent to achieve different political ends that sit outside of the liberal democratic reform. It takes accepting the logic of investment and potentiality as a white heteronormative citizen’s fantasy, and that the law will almost always affirm such a fantasy, especially when the lives of undocumented racialized children are involved, as was the case in *Plyler*. The universality assumed in the deployment of the child figure is always a white abstraction within legal discourse such that its analytic and political purchase runs out of steam when racialized gendered subjects are involved in the field of the political. I do not question the importance of education. Such readings and argumentation would do a great disservice to racialized gendered populations who have been fighting for equal access to public services, and to literacy over the course of history. I do, however, see a connection between the child as a malleable and re-formable subject relative to the undocumented adult migrant whose mind is no longer pliable in the same way. This malleability is constructed as important so long as it is in service of the U.S. nation-state, and the potentiality in this malleability represents a trap for the racialized gendered and undocumented subjects because it never existed, but the viability of the discourse, just like plasticity, withers as the child ages, creating a double bind.

### **Conclusion: The child figures centrally**

In this essay, I have argued that a revisiting of the child figure in racialized migration discourses, as well as the futurity and potentiality deployed to secure education for undocumented Mexican children in Texas (and beyond), is needed to understand and avoid similar trappings in our contemporary political space. To make these claims, I have drawn on the discourse used to secure education and thus a future in the face of the racist and xenophobic policies in Texas from 1975 to 1982 so as to elucidate the discursive formations in legal spaces, or the space of the political, that rest on abstraction with long-standing effects for both actual living children as they age and the actual living adults used to bridge the distance. Moreover, what drives the analysis of the essay is a consideration of the affective attachments made to *Plyler* and highlighting at the expense of whom such a positive attachment made

possible in liberal reformist politics.

I am not repudiating or erasing the benefits of the *Plyler* case for the purposes it has served. Now the beneficiaries represent citizen children or DACA-mented youth who have been able to receive a K–12 education, continue to higher education, and contribute to households while being deprioritized for deportation. These outcomes, however, stand in stark contradistinction to undocumented racialized adult migrants who do not have the same relationship to educational institutions or the state because of having crossed the border as adults, committing a crime or otherwise falling outside of the delineations of the type of migrant that is not as expendable. The tension, as I have attempted to show throughout, is that this is a false dichotomy produced by the law whose central function is to affirm the political and economic logics that deem undocumented racialized migrants always already expendable.

Undocumented racialized migrants' migration is often reduced to the narrative of "seeking a better life" for their children and themselves, and the realities of undocumented migrants become obfuscated under liberal nationalist conceptualizations of immigration. For undocumented migrants to become legible in liberal discourses, they must fit into longstanding narratives of progress tied to economic mobility and educational attainment for their children. I do not mean to suggest that these reasons are untrue or any less valid; however, I have attempted to highlight that there is a peculiar pairing of immigration and education that is reflected in *Plyler*. In this political moment, we see this reflected in the arguments for the DREAM act, DACA, and removal of DAPA, the latter of which has likely fallen out of public consciousness, if it ever entered it. For the undocumented racialized adult migrant—who cannot participate in K–12 education—their circulation as a criminal and indigent population upholds the notion that their abjection is deserved, a stage in life that undocumented racialized children and adolescents age into. Therefore, I ask us to think about the negative consequences of affirming the right to an education for some while entrenching criminality for others and to consider alternatives in immigration and education policy that do not further entrench the criminality of undocumented migrants more broadly. More specifically, the need to sit with history and to consider how the seemingly good feelings attached to and on which liberal reformist politics rely to affirm progress is crucial in our search for different and more liberatory futures.

The questions that this essay ends with speak to, in my opinion, the important work in our quest for different futures: How do we see past the good feelings produced to uncover that which causes uneasiness? How do we sit with the uneasiness? And what do we do after? In short, and to invoke Walter Benjamin (1940/1968), the weathering of the storm of progress that urges us to leave the wreckage of history behind (a wreckage whose positive and negative effects of being left behind in favour of progress are unevenly distributed for racialized gendered and undocumented subjects) creates a double bind that consists of chasing the DREAM in hopes that it will relieve us of the nightmare we occupy wherein the future always has promise but the past is always present even if its presence is ephemeral for some. The moral imperative, then, consists of actively listening and interrogating the negative affective attachments to the past that is always showing up when it was thought we had moved on. It requires that we resist the allure of progress to consider who is at left at the bottom of the wreckage, and find answers. It means stopping our attempts to forget, to move forward, and to leave behind those who make the forward movement into the future—or better yet, a particular configuration of the future—possible.

## References

- Abrego, L. J. (2006). "I can't go to college because i don't have papers": Incorporation patterns of Latino undocumented youth. *Latino Studies*, 4, 212–231. <https://doi.org/10.1057/palgrave.lst.8600200>
- Abrego, L. J., & Gonzales, R. G. (2010). Blocked paths, uncertain futures: The postsecondary education and labor market prospects of undocumented Latino youth. *Journal of Education for Students Placed at Risk*, 15(1–2), 144–157. <https://doi.org/10.1080/10824661003635168>
- Benjamin, W. (1968). Theses on the philosophy of history (H. Zohn, Trans.). In H. Arendt (Ed.), *Illuminations: Essays and reflections*. Schocken Books. (Original work written 1940)
- Cardenas, J. A., & Cortez, A. (1986). The impact of "Doe v. Plyler" upon Texas public schools. *Journal of Law & Education*, 15(1). ERIC Institute of Education Sciences, ERIC No. EJ335773.
- Castañeda, C. (2002). *Figurations: Child, bodies, worlds*. Duke University Press. <https://doi.org/10.1215/9780822383895>
- De Genova, N. P. (2002). Migrant "illegality" and deportability in everyday life. *Annual Review of Anthropology*, 31(1), 419–447. <https://doi.org/10.1146/annurev.anthro.31.040402.085432>
- Derrida, J. (2012). *Specters of Marx: The state of the debt, the work of mourning, and the new international*. Routledge. <https://doi.org/10.4324/9780203821619>
- Dinshaw, C., Edelman, L., Ferguson, R. A., Freccero, C., Freeman, E., Halberstam, J., Jagose, A., Nealon, C. S., & Nguyen, T. H. (2007). Theorizing queer temporalities: A roundtable discussion. *GLQ: A Journal of Lesbian and Gay Studies*, 13(2), 177–195. <https://doi.org/10.1215/10642684-2006-030>
- Doe v. Plyler, 458 F. Supp. 569 (Dist. Court, ED Texas 1978).
- Edelman, L. (2004). *No future: Queer theory and the death drive*. Duke University Press. <https://doi.org/10.1215/9780822385981>
- Gerety, T. (1982). Children in the labyrinth: The complexities of Plyler v. Doe. Symposium: Strangers to the Constitution: Immigrants in American Law: Equal Protection for Illegal Aliens. *University of Pittsburgh Law Review*, 44, 379.
- Gill-Peterson, J. (2018). *Histories of the transgender child*. University of Minnesota Press. <https://doi.org/10.5749/j.ctv75d87g>
- Gonzales, R. G. (2010). On the wrong side of the tracks: Understanding the effects of school structure and social capital in the educational pursuits of undocumented immigrant students. *Peabody Journal of Education*, 85(4), 469–485. <https://doi.org/10.1080/0161956X.2010.518039>
- Gonzales, R. G. (2011). Learning to be illegal: Undocumented youth and shifting legal contexts in the transition to adulthood. *American Sociological Review*, 76(4), 602–619. <https://doi.org/10.1177/0003122411411901>
- Gonzales, R. G. (2015). *Lives in limbo: Undocumented and coming of age in America*. University of California Press. <https://doi.org/10.1525/9780520962415>
- Gonzales, R. G., & Chavez, L. R. (2012). "Awakening to a nightmare": Abjectivity and illegality in the lives of undocumented 1.5-generation Latino immigrants in the United States. *Current Anthropology*, 53(3), 255–281. <https://doi.org/10.1086/665414>
- Gonzales, R. G., Heredia, L. L., & Negrón-Gonzales, G. (2015). Untangling Plyler's legacy: Undocumented students, schools, and citizenship. *Harvard Educational Review*, 85(3), 318–341. <https://doi.org/10.17763/0017-8055.85.3.318>
- Hernandez v. Houston Independent School District. 558 SW 2d 121 (Texas Court of Civil Appeals, 3rd Dist. 1977).
- Hull, E. (1982). Undocumented alien children and free public education: An analysis of Plyler v. Doe. Symposium: Strangers to the Constitution: Immigrants in American Law: Equal Protection for Illegal Aliens. *University of Pittsburgh Law Review*, 44, 409.
- In re Alien Children Ed. Litigation, 501 F. Supp. 544 (Dist. Court, SD Texas 1980). <https://casetext.com/case/in-re-alien-children-ed-litigation>

- Kelly, J. F. (2017, June 15). *Rescission of November 20, 2014 memorandum providing for deferred action for parents of Americans and lawful permanent residents ("DAPA")*. <https://www.dhs.gov/sites/default/files/publications/DAPA%20Cancellation%20Memo.pdf>
- Menjívar, C. (2006). Liminal legality: Salvadoran and Guatemalan immigrants' lives in the United States. *American Journal of Sociology*, 111(4), 999–1037. <https://doi.org/10.1086/499509>
- Napolitano, J. (2012, June 15). *Exercising prosecutorial discretion with respect to individuals who came to the United States as children*. <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>
- Ngai, M. M. (2014). *Impossible subjects: Illegal aliens and the making of modern America*. Princeton University Press. <https://doi.org/10.1515/9781400850235>
- Ofer, U. (2011). Protecting Plyler: New challenges to the right of immigrant children to access a public school education. *Columbia Journal of Law and Race*, 1, 187. <https://doi.org/10.7916/cjrl.v1i2.2245>
- Olivas, M. A. (2005). Plyler v. Doe, The education of undocumented children, and the polity. *Immigration Stories*, 197, 197–220. <https://dx.doi.org/10.2139/ssrn.4107785>
- Olivas, M. A. (2012). *No undocumented child left behind: Plyler v. Doe and the education of undocumented schoolchildren*. New York University Press. <https://doi.org/10.18574/nyu/9780814762448.001.0001>
- Plyler v. Doe, 457 US 202 (Supreme Court 1982).
- Reddy, C. (2011). *Freedom with violence: Race, sexuality, and the US state*. Duke University Press. <https://doi.org/10.1215/9780822394648>
- Saldaña-Portillo, M. J. (2016). *Indian given: Racial geographies across Mexico and the United States*. Duke University Press. <https://doi.org/10.1215/9780822374923>
- Shelley, F. M. (1994). Local control and financing of education: A perspective from the American state judiciary. *Political Geography*, 13(4), 361–376. [https://doi.org/10.1016/0962-6298\(94\)90004-3](https://doi.org/10.1016/0962-6298(94)90004-3)
- Soleimani, D. (2010). Plyler in peril: Why the Supreme Court's decision in Plyler v. Doe is at risk of being reversed—and what Congress should do about it. *Georgetown Immigration Law Journal* 25, 195.
- Steedman, C. (1995). *Strange dislocations: Childhood and the idea of human interiority, 1780–1930*. Harvard University Press.
- Texas v. US, 809 F. 3d 134 (Court of Appeals, 5th Circuit 2015).